

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1769 of 1999

to

FIRST APPEAL No 1773 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

NANJI KANJI

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Appearance:

Mr. P.G. Desai, GP, for the appellant in First Appeals Nos.1769 to 1771 of 1999

Mr. R.C. Kodekar, AGP, for the appellant in First Appeals Nos.1772 to 1773 of 1999

MR VIMAL M PATEL for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

Date of decision: 03/11/1999

COMMON ORAL JUDGEMENT

1. Admitted. Mr. V.M. Patel, learned counsel, waives service of notice on behalf of respondents in each appeal. At the request of learned counsel appearing for the parties, all these appeals are taken up for final hearing today.

2. All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated September 30, 1998, rendered by the learned Assistant Judge, Junagadh, in Land Reference Cases Nos. 670 of 1989 to 674 of 1989. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

3. The Executive Engineer, Panchayats and Irrigation Department, Junagadh, made a proposal to acquire agricultural lands of village Vekaria, Taluka: Vekaria, District Junagadh, for the public purpose of 'Vekaria Small Irrigation Plan'. The said proposal was scrutinized by the State Government and notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was published on August 23, 1984. After following the procedure prescribed under the Act, notification under Section 6 of the Act was made which was published in the government gazette on December 11, 1986. Notices were served on the persons interested in the acquired lands. The Land Acquisition Officer, on the basis of materials placed before him, made his award on November 30, 1987, offering compensation of the acquired agricultural lands at the rate of Rs.75 per Are. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters under Section 18 of the Act to the Court for determination of appropriate compensation. According to the claimants, their lands were fertile and they used to raise 2-3 crops in a year and were getting substantial income out of the agricultural produces. The claimants claimed higher compensation at Rs.600/- per Are. The reference applications were opposed by the appellant by filing their objections at Exh.12. It was contended by the appellant that the Land Acquisition Officer had taken into consideration sale instances of last five years of the neighbouring lands and awarded just and adequate compensation. The Land Acquisition Officer had also taken into consideration fertility and situation of the acquired lands while fixing compensation of the acquired lands which were non-irrigated agricultural lands. It is, therefore, prayed that the reference applications be dismissed with costs. On basis of the rival assertions of the parties, the Reference Court raised common issued at Exh.30.

4. The respondents, to substantiate their claim of Rs.600/- per Are, examined following witnesses: (i) Bhagabhai Sendhabhai, claimant of L.R. Case No.669/89 is examined at Exh.20; (ii) Devayatbhai Pujabhai, the legal heir of claimant of L.R. No.674/89 is examined at Exh..21; (iii) Nanjibhai Kanjibhai, one of the claimants, is examined at Exh.22; (iv) Bhimabhai Vastabhai, one of the claimants, is examined at Exh.23 and (v) Pravindbhai Devayatbhai is examined at Exh.23. The respondents also produced copy of 7/12 extracts and earlier awards of the Reference Court at Exh.17 and at Exh.19. The appellant did not lead any oral or documentary evidence.

5. The Reference Court, after appreciating oral as well as documentary evidence produced by the respondents, deduced that the previous award Exh.19, which was in respect of the acquired lands of village Vekaria, was comparable as well as relevant for the purpose of ascertaining market value of the acquired lands in the present case. The lands of same village Vekaria, which were subject matter of award Exh.19, were acquired by notification issued under Section 4(1) of the Act which came to be published prior to 3.1/2 years of the notification of the present appeals. The Reference Court in award Exh.19 had determined market value at the rate of Rs.391/- per Are for non-irrigated lands of village Vekaria. The witnesses examined by the respondents had led oral evidence that the lands, which were the subject matter of award Exh.19, were in all respects comparable and were having the same fertility as compared to the present acquired lands. It was not brought on the record before the Reference Court that the award Exh.19 was challenged in the higher forum. The Reference Court, therefore, placed reliance on award Exh.19 for determination of the market value of the present acquired lands of village Vekaria. The Reference Court held that the respondents were entitled to increase in rise of price of lands at the rate of 10% per annum. On ultimate analysis, the Reference Court held that the respondents are entitled to compensation at the rate of Rs.528/- per Are for the present acquired non-irrigated lands, which has given rise to the present appeals.

6. Mr. P.G Desai, learned Government Pleader, assisted by Mr RC Kodekar, Assistant Government Pleader, appearing for the appellant, submitted that no cogent and reliable evidence was led by the respondents-claimants to establish that they were entitled to compensation at the rate of Rs. 528/- per Are for the acquired non-irrigated lands. It was pleaded that the earlier award of the Reference Court at Exh. 19 was neither comparable nor

relevant for the purpose of ascertaining the market value of the acquired lands and, therefore, the appeals should be allowed

7. Learned advocate, Mr Vimal Patel, for the respondents, has vehemently submitted that, when no sale deed or other reliable evidence was available before the Reference Court for the purpose of ascertaining the market value of the acquired lands, the Reference Court was justified in placing reliance on the earlier award Exh.19, which was with respect to the acquired lands of the very same village Vekaria, wherein, the Reference Court had determined the market value of the acquired lands at the rate of Rs. 391/- per Are in 1980. It is submitted by the learned advocate for the respondents that non-irrigated acquired lands of award Exh.19 were in all respects relevant and comparable to the present acquired lands and the Reference Court had not committed any error in placing reliance on the award Exh.19. It is lastly submitted by the learned advocate for the respondents that the Reference Court has awarded a just and reasonable compensation to the respondents and the appeals be dismissed.

8. We have heard the learned advocates for the parties at length. We have also taken into consideration oral evidence as well as relevant documentary evidence produced by the parties.

9. It is settled legal principle, as laid down by the Supreme Court and several High Courts, that, when other reliable evidence in form of relevant sale transactions or evidence of experts, is not available on record, the Reference Court can place reliance on the previous award of the Reference Court in respect of similar lands of the same village or adjacent lands and which has become final between the parties, for the purpose of determining market value of the lands acquired subsequently. In our opinion, the respondents had led sufficient evidence to show that the acquired lands of award Exh.19 in all respects were comparable and similar to the lands acquired in the present case. It was not brought to the notice of the Reference Court that the previous award of the Reference Court Exh.19 was either set aside or modified in any manner by the higher forum. Under these circumstances, the Reference Court proceeded on the footing that the said award had become final between the parties. Further, reasonable rise in price of the lands can also be considered if there is gap of time between issuance of notifications under Section 4(1)

of the Act. It is a common knowledge that due to acquisition of the agricultural lands there is increase in price of lands every year. The Reference Court did not commit any error by giving rise in price of 10% every year looking to the pressure on the surrounding lands because of various acquisition for public purpose. In the earlier case, notification under Section 4(1) of the Act was published in the year 1980 whereas in the present case notification under Section 4(1) of the Act was published on August 23, 1984. It is reasonable to presume that the price of land would increase with passage of time and the Reference Court has awarded rise in price of land at the rate of 10% per annum which, by no stretch of imagination, can be said to be excessive. On over all view of the matter, in our opinion, the Reference, by placing reliance on award Exh.19, had awarded a just and adequate compensation to the respondents for the acquired non-irrigated lands in the present case, and no ground is made out by the appellant to interfere with the same in the present appeals.

10. From the impugned award, we find that a direction has been given by the Reference Court to deduct 5 per cent from the amount payable to the claimants in case of new tenure lands. Such deduction could not have been ordered in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra vs. Babu Govind Gavate, etc. reported in AIR 1996 Supreme Court 904. In the said case, it is ruled by the Supreme Court that S.43 of the Bombay Tenancy and Agricultural Land Act was enacted to protect the right, title and interest of the tenant who purchased the property and became owner thereof with a view to see that he is not deprived of his ownership, right to possession and enjoyment thereof as a tiller of the soil to perpetuate the object of the Act and under its scheme, previous sanction is a condition precedent for any transfer, but that does not give power to the Government when it acquires that land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under Section 23(1) of the Act. What is emphasized therein is that the sanction required under Section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee, etc. as envisaged under Section 43(1), but, when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 43 does not arise and, therefore, no amount can be deducted from the compensation payable to the owner of the lands. In view

of the aboveresferred to principles laid down by the Supreme Court, direction given by the Reference Court to deduct 5% from the amount of compensation payable to the claimants in case of new tenure lands will have to be set aside.

11. For the foregoing reasons, the appeals are dismissed. The determination of the Reference Court at Rs.528/- per Are for the acquired non-irrigated land of village Vekaria is confirmed. The direction given by the Reference Court to deduct 5% of the amount from the compensation payable to the claimants in respect of new tenure lands is hereby set aside. Rest of directions in respect of statutory benefits given by the Reference Court are not disturbed and are hereby upheld. There shall be no order as to costs.

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